

Text of Former Local Rule CV-26. Below is the text of former Local Rule CV – 26 concerning discovery and the duty of disclosure. It may be relevant to cases filed before December 1, 2000 (see General Order 00-11).

LOCAL RULE CV-26 Provisions Governing Discovery; Duty of Disclosure

- (a) **Tracking and Presumptive Discovery Limits.** Upon the filing of each case, the court will assign the case to one of six tracks. The parties may submit an agreed notice of assignment of the case to a track lower than the one to which it is initially assigned by the court. Upon submission of such notice, signed by counsel for all parties, the case will remain on the track agreed to unless modified by the court at the management conference. Each track will carry presumptive discovery limits as set forth below. These limits shall govern the case and may not be increased by the parties or their attorneys by agreement or otherwise. If any additional change of track number is necessary it should be taken up at the management conference at which time the judicial officer to whom the case is assigned may, upon good cause shown, expand or limit the discovery.

TRACK ONE: No discovery.

TRACK TWO: Disclosure only.

TRACK THREE: Disclosure plus 25 interrogatories, 25 requests for admission, depositions of the parties, and depositions on written questions of custodians of business records for third parties.

TRACK FOUR: Disclosure plus 25 interrogatories, 25 requests for admissions, depositions of the parties, depositions on written questions of custodians of business records for third parties, and three other depositions per side (i.e., per party or per group of parties with a common interest).

TRACK FIVE: Disclosure plus a discovery plan tailored by the judicial officer to fit the special management needs of the case.

TRACK SIX: Disclosure plus a discovery plan as determined by the judicial officers to fit the special management needs of mass tort and other large groups of similar cases.

- (b) **Initial Disclosure.**

(1) Each party shall, without awaiting a discovery request, provide to every other party:

(A) The name and, if known, the address and telephone number of each person likely to have information that bears significantly on any claim or defense, identifying the subjects of the information, and a brief, fair summary of the substance of the information known by the person;

(B) A copy of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are likely to bear significantly on any claim or defense [Note: by written agreement of all parties, alternative forms of disclosure may be provided in lieu of paper copies. For example, the parties may agree to exchange images of documents electronically or by means of computer disk; or the parties may agree to review and copy

disclosure materials at the offices of the attorneys representing the parties instead of requiring each side to furnish paper copies of the disclosure materials];

- (C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34, the documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and
 - (D) For inspection and copying as under Rule 34, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.
 - (E) There is no duty to disclose privileged documents. Privileged documents or information shall be identified and the basis for the claimed privilege shall be disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.
 - (F) Authorizations.
 - (i) Where a party's physical or mental condition is at issue in the case, that party shall provide the party's medical records or shall furnish a signed authorization to the opposing party's counsel so that records of health care providers which bear significantly on injuries and damages claimed may be obtained. If additional records are desired, the requesting party will have to show the need for them.
 - (ii) Where lost earnings, lost earning capacity or back pay is at issue in the case, the party making such claims shall furnish signed authorizations to the opposing party's counsel so that wage and earning records of past and present employers, and the Social Security Administration records, may be obtained.
 - (iii) Copies of any records obtained with authorizations provided pursuant to subsections (i) or (ii) above shall be promptly furnished to that party's counsel. Records which are obtained shall remain confidential. The attorney obtaining such records shall limit their disclosure to the attorney's client (or in the case of an entity, those employees or officers of the entity necessary to prepare the defense), the attorney's own staff and consulting and testifying experts who may review the records in connection with formulating their opinions in the case.
- (2) Timing of Disclosure. Unless the judicial officer directs otherwise, or the parties

otherwise stipulate with the judicial officer's approval, these disclosures shall be made as follows:

- (A) by a plaintiff within 30 days after
 - (i) service of a Rule 12(b) motion or
 - (ii) service of an answer to its complaint or
 - (iii) removal of the action from state courtwhichever occurs first;
 - (B) by a defendant within 30 days, or within 45 days by agreement of the parties, after
 - (i) serving a Rule 12(b) motion or
 - (ii) serving its answer to the complaint or
 - (iii) removal of the action from state court, provided that service of process has been perfected upon that defendantwhichever occurs first; and, in any event
 - (C) by any party that has appeared in the case within 30 days after receiving from another party a written demand for accelerated disclosure accompanied by the demanding party's disclosure.
- (3) Bears Significantly On. The following observations are provided for counsels' guidance in evaluating whether a particular piece of information "bears significantly on" a claim or defense.
- (A) It includes information that would not support the disclosing parties' contentions;
 - (B) It includes those persons who, if their potential testimony were known, might reasonably be expected to be deposed or called as a witness by any of the parties;
 - (C) It is information that is likely to have an influence on or affect the outcome of a claim or defense;
 - (D) It is information that deserves to be considered in the preparation, evaluation or trial of a claim or defense;
 - (E) It is information that reasonable and competent counsel would consider reasonably necessary to prepare, evaluate or try a claim or defense;
 - (F) All information that bears significantly on a claim or defense is relevant but all relevant information does not necessarily bear significantly on a claim or defense.

- (4) **No Excuses.** A party is not excused from disclosure because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures. Absent court order to the contrary, a party is not excused from disclosure because there are pending motions to dismiss, to remand or to change venue. Parties asserting the defense of qualified immunity may submit a motion to limit disclosure to those materials necessary to decide the issue of qualified immunity.

(c) **Disclosure of Expert Testimony.**

- (1) In addition to the disclosures required in section (c), each party shall disclose to every other party the identity of any person who may be used at trial to present evidence under Rules 702, 703, and 705, Federal Rules of Evidence. This disclosure shall be in the form of a written report prepared and signed by the witness that includes a complete statement of all opinions to be expressed and the basis and reasons therefor, the data or other information considered in forming such opinions; any exhibits to be used as a summary of or support for such opinions; the qualifications of the witness; and a listing of any other cases in which the witness has testified as an expert at trial or in deposition within the preceding four years. When listing the cases in which the witness has testified as an expert, the disclosure shall include the styles of the cases, the courts in which the cases were pending, the cause numbers, and whether the testimony was in trial or deposition. In addition, the report must include a list of all publications authored by the witness within the preceding ten years and the compensation to be paid for the study and testimony in this case. On motion of the party, an expert witness not retained or employed may be excused from filing the required report with approval of the court.
- (2) Unless the judicial officer designates a different time, this disclosure shall be made at least 90 days before the date the case has been directed to be ready for trial, or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another under section (d)(1), then disclosure shall be made within 30 days after such disclosure is made.
- (3) By order in the case, the judicial officer may alter the type or form of disclosures to be made with respect to particular experts or categories of experts, such as treating physicians.

(d) **Pretrial Disclosure**

- (1) In addition to disclosures required in the preceding sections, each party shall provide to every other party information regarding the evidence that the disclosing party may present at trial as follows:
- (A) The name and, if not previously provided, the address and telephone number, of each witness, separately identifying those whom the party expects to

present at trial and those whom the party may call if the need arises.

- (B) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony.
 - (C) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.
- (2) **Timing.** Unless otherwise directed by the judicial officer, these disclosures shall be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (1) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B) and (2) any objections, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.
- (e) **Form of Disclosures, Meeting, Filing.** The disclosures required by the preceding sections shall be made in writing and signed by the party or counsel in accordance with Rule 26(a)(4) and 26(g) and shall constitute a certification that, to the best of the signer's knowledge, information and belief, such disclosure is complete and correct as of the time it is made. If feasible, counsel shall meet to exchange disclosures required by sections (b) and (d); otherwise such disclosures shall be served as provided by Rule 5, Fed.R. Civ. P. The parties shall file a prompt notice with the court that the required disclosure has taken place.
 - (f) **Duty to Supplement.** After disclosure is made pursuant to this article, each party is under a duty to immediately supplement or correct its disclosures if the party obtains information on the basis of which it knows that the information disclosed was either incomplete or incorrect when made, or is no longer complete or true.
 - (g) **Discovery Hotline - (903) 590-1198.** The court shall provide a judicial officer on call during business hours to rule on discovery disputes and to enforce provisions of these rules. Counsel may contact the judicial officer by dialing the hotline number listed above for any case in the district and get an immediate hearing on the record and ruling on the discovery dispute or request to enforce or modify provisions of the rules as they relate to a particular case.